

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DERRICK AVERY,

Defendant.

Case No. 09-CR-196

Milwaukee, Wisconsin

April 13, 2012

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE LYNN ADELMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For the Plaintiff:

United States Attorney
By: **Mr. Joseph Wall**
Mr. Melvin Washington
Assistant U.S. Attorneys
530, U.S. Courthouse
517 E. Wisconsin Ave.
Milwaukee, WI 53202

For the Defendant:

Kuchler Law Offices
By: **Mr. Anthony D. Cotton**
Ms. Donna Kuchler
Attorneys at Law
1535 E. Racine Avenue
Waukesha, WI, 53187-0527

REPORTED BY:

HEIDI J. TRAPP
Federal Official Court Reporter
310, U.S. Courthouse
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 297-3074

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

TRANSCRIPT OF PROCEEDINGS

THE COURT: This is 09-CR-196, U.S. vs. Avery. Can we have the appearances?

MR. WALL: Melvin Washington and Joseph Wall for the United States. Good afternoon, Your Honor.

MS. VODAK: Good afternoon, Your Honor. Eileen Vodak with the Probation Office.

MR. COTTON: Good afternoon, Judge. Tony Cotton and Donna Kuchler appearing with Derrick Avery. He's here in custody.

THE COURT: Okay. Before formally -- or going to the formal sentencing, Mr. Avery, I got a request from you awhile ago for a new lawyer. It's my understanding that you and Mr. Cotton have met and you've resolved your differences. Is that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And so you're withdrawing your request for a new counsel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And Mr. Cotton, you've been able to resolve your problems? You're happy to continue?

MR. COTTON: Both Miss Kuchler and I are happy to continue, Judge.

THE COURT: Okay. And -- let's see. Mr. Avery, you and your lawyer have gone over the presentence report?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And you've had enough time to meet with
3 your lawyer?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. And other than what's been filed in
6 writing, do you have any objections to the facts or the
7 guidelines that are in the report?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Okay. And the Government have any
10 objections to the facts or the guidelines?

11 MR. WALL: No, Your Honor.

12 THE COURT: Okay. All right. I'll momentarily get to
13 the objections. Does either -- Mr. Cotton, or Mr. Wall, does
14 anybody want to add anything to what's been submitted in
15 connection with the objections?

16 MR. WALL: No, Your Honor.

17 THE COURT: I've gone over it. But if you want to say
18 something more, I just --

19 MS. KUCHLER: Yes, I would like to briefly address the
20 objections.

21 THE COURT: Go ahead.

22 MS. KUCHLER: Thank you, Your Honor. The defense
23 believes that there should be, of course, a six point
24 subtraction from the recommended level calculated by the
25 Pretrial Services Department of Probation. We believe that the

1 correct level should be 35. I won't go through the factual
2 issues that we had. Just simply that offense level computation.

3 And you've read, of course, the written submission.
4 But on the obstruction of justice, both Mr. Wall's office and us
5 both agree that Mr. Avery should not be given an enhancement for
6 obstruction of justice as a joint recommendation. The reasons
7 are outlined in my -- or our presentence objections that we
8 submitted to the Court.

9 THE COURT: Okay.

10 MS. KUCHLER: We also do not believe Mr. Avery should
11 be given the two level increase for undue influence of a minor,
12 and for the commission of a sex act. And if the Court agrees
13 with us on that, that would then eliminate the four points. We
14 think that that is impermissible double counting, because the
15 underlying offense itself, the offense of conviction for
16 Mr. Avery, by necessity -- and I'm on page 4 of my objections.

17 THE COURT: I don't recall -- let me get to that --
18 objection to the commission of the sex act part. The rest of it
19 I'm with you, but I didn't -- I don't --

20 MS. KUCHLER: It's the last paragraph of Page 4,
21 paragraphs 105 and 106.

22 THE COURT: You're talking about Page 4 of your memo?

23 MS. KUCHLER: Yes. Of our PSR objections. Under date
24 of April 5th.

25 THE COURT: Okay. Very good. Go ahead.

1 MS. KUCHLER: Okay. So the last paragraph of that I
2 we had combined the undue influence of a minor objection, and
3 the commission of a sex act.

4 THE COURT: Okay.

5 MS. KUCHLER: And those were each a two point
6 enhancement. We believe that that is impermissible double
7 counting, because a crime of conviction by necessity requires
8 the sex act and the involvement of a minor. Even though we
9 recognize the case of Vizcarra, V-I-Z-C-A-R-R-A, at 668 Fed.3d
10 516, that indicates -- and that's a Seventh Circuit case -- that
11 recognizes that adjustments are permissible, it didn't -- it
12 doesn't mandate that the Court apply those enhancements. And I
13 think -- as I said in my objections, that I think it's really
14 important that the Court -- as the guidelines notes indicate,
15 the Court supposedly -- is supposed to closely consider the
16 facts of this particular case in order to determine whether
17 Mr. Avery's influence over the minor compromised the minor's
18 behavior, or whether the minor was so inclined.

19 If the Court agrees with our objections, then the
20 correct offense level here would be 35, after acceptance of
21 responsibility.

22 THE COURT: Okay.

23 MS. KUCHLER: Thank you.

24 THE COURT: Any response from the Government?

25 MR. WALL: Your Honor, I -- like the Court, I also

1 missed the commission of a sex act aspect of the objection,
2 concentrating on the undue influence. The Court has my
3 submission. I can tell the Court that there are a number of
4 cases that I came across in looking for the undue influence
5 aspect of this that talk about the actual commission of a sex
6 act as not being double counting. In other words, the
7 enhancement -- adding the enhancement is not double counting.

8 The Statute itself, the elements of the crime, do not
9 require that the person, child, or adult actually have committed
10 an act of prostitution. The elements are set forth in my letter
11 to the Court on April 13th, so it's really the same argument
12 that I make under the undue influence. That's all I can really
13 add.

14 THE COURT: Okay. All right. First let me address
15 the factual objections and clarifications to the offense conduct
16 section of the PSR that the Defendant makes. Paragraph 16
17 through 22 of the PSR are taken nearly verbatim from the Plea
18 Agreement that the Defendant signed. Specifically from the
19 factual basis section, Section 5, which the Defendant agreed was
20 true and correct, and establishes guilt beyond a reasonable
21 doubt. I can and will rely on these paragraphs and the other
22 ones to which he doesn't object. I also note that a fair number
23 of the Defendant's factual objections, such as the denial that
24 Sierra traveled to other cities, and his denial that he was ever
25 violent with Sierra, are -- really they're bare denials. And

1 bare denials are not sufficient to contest a presentence report.
2 The Seventh Circuit has long held that District Courts can rely
3 on information contained in a presentence report, as long as
4 it's well supported and appears reliable. See, for example,
5 U.S. vs. Moreno-Padilla, 602 F.3d 802, at 808 and 809, Seventh
6 Circuit, 2010, citing U.S. vs. Heckel, 570 F.3d 791, at 795,
7 Seventh Circuit, 2009. U.S. vs. Salinas, 365 F.3d 582, at 587,
8 Seventh Circuit, 2004. U.S. vs. Mustread, 42 F.3d 1097, 1101
9 and 02, Seventh Circuit, 1994.

10 And when a Court relies on a presentence report, it's
11 the Defendant's task to show that the facts contained in the
12 report are inaccurate. And to do that the Defendant has to
13 produce some evidence that calls the reliability or the
14 correctness of the facts that are in the report into question.
15 Just a bare denial is not enough. See Mustread, 42 F.3d, at
16 1101 and 02. Only if the Defendant's objection creates real
17 doubt as to the reliability of the information in the PSR does
18 the Government have the burden of independently demonstrating
19 the accuracy of the information. See Moreno-Padilla, 602 F.3d
20 at 809.

21 Here the facts are generally taken from the sworn
22 statements of the women involved, and the statements corroborate
23 each other in significant ways, though all describe the same
24 general tactics that the Defendant used. Tactics that he
25 himself admitted using generally in the Plea Agreement. And so

1 Defendant's bare denials are insufficient. Nevertheless,
2 because these factual objections don't affect the guidelines,
3 and because they won't affect the sentence, I don't have to
4 resolve them under Federal Rule of Criminal Procedure 32
5 (i) (3) (B).

6 The first guideline objection is to the enhancement
7 for obstruction under guideline 3C1.1, which the PSR bases on
8 Defendant's alleged attempts to influence witness testimony
9 before the Grand Jury. The Defendant denies that he threatened,
10 intimidated, or otherwise unlawfully influenced a witness. He
11 says he told them to tell the truth. The Government agrees that
12 the Defendant should not receive this enhancement. The
13 Government bears the burden of showing that the Defendant acted
14 with specific intent to obstruct justice. See U.S. vs. House,
15 551 F.3d 694 at 699, Seventh Circuit, 2008. And the Government
16 does not attempt to do so here. So I will decline to impose
17 this enhancement. And this makes the offense level 39.

18 The second guideline objection is to the enhancement
19 under guideline 3G1.3(b) (2) (B). I read it as primarily based on
20 unduly influencing a minor, but it's also -- refers to the
21 commission of a sex act. And it's basically a double counting
22 argument, and the argument essentially is that by enhancing for
23 unduly influencing and commission of a sex act, that it's a form
24 of double counting because this conduct is inherent in the
25 offense of conviction. However, the Defendant doesn't argue

1 that the enhancement doesn't textually apply. And as he
2 concedes, the Seventh Circuit has held that cumulative
3 adjustments and enhancements are permissible unless the
4 guidelines specifically say otherwise. See U.S. vs. Vizcarra
5 V-I-Z-C-A-R-R-A, 668 F.3d 516 at 519, Seventh Circuit, 2012.

6 As the Government explains in its response set forth
7 in the addendum, there really isn't double counting here anyway,
8 as undue influence isn't required for the offense of conviction
9 itself. And the facts as set forth in the addendum establish
10 that the enhancement applies. First, given the age difference
11 between the Defendant and the victim, Mary, there's a rebuttable
12 presumption that applies under application note 3(b). She was
13 17, and the Defendant was in his 30's. Second, the conduct here
14 reflects the sort of psychological manipulation and enticement
15 employed by pimps on minors. And this is discussed in
16 Paragraph 63 of the presentence, to which the Defendant doesn't
17 object. Aside from denying that he took her purse or I.D. card.
18 And third, the cases reject this double counting argument. See
19 U.S. vs. Lay, L-A-Y, 583 F.3d 436 at 446 and 47, Sixth Circuit,
20 2009. So as to the sort of combined objection based on undue
21 influence of a minor, and commission of a sex act, I'm going to
22 overrule that objection.

23 Finally, Defendant objects to the scoring of the
24 battery conviction in Paragraph 153, arguing that this is an
25 outdated municipal violation; however, as he concedes, this

1 conviction falls within the 10 year lookback of guideline
2 4A1.2(e) (2). And because battery is also a violation of State
3 law, it does count under guideline 4A1.2(c) (2). In any event,
4 even if I exclude this point, the Defendant still falls in
5 history Category 6. I can consider this matter under 3553(a),
6 but as a guideline objection it fails.

7 Otherwise, I'll adopt the facts in the PSR as my
8 findings of fact. The guidelines then are a level 39, criminal
9 history 6. The range then is 360 months to life imprisonment.
10 One to three years supervised release on Count 1; 2 to 5 years
11 on Count 3; 25,000 to a million fine; \$200 assessment. And if
12 we're -- if we can now proceed to sentence, Mr. Cotton or Miss
13 Kuchler, I'll be glad to hear from you and/or Mr. Avery.

14 MR. COTTON: And we'll have some family members that
15 would like to say a few words at some point, too, Judge.

16 The Court obviously has received our sentencing
17 memorandum. We're asking the Court to impose a decade in prison
18 in this case. A decade is a huge amount of time. What we're
19 asking the Court to do would in effect result in Mr. Avery being
20 incarcerated until his mid-50's. And that's a substantial
21 sentence for anybody to have to endure. It is not -- of course
22 the Court is obviously guided by the 3553(a) factors, and the
23 Court has to determine what's reasonable, given what Mr. Avery's
24 pled guilty to. But I want to touch on a few remarks that
25 Mr. Wall made in his sentencing memorandum which was filed a

1 couple days ago, as well.

2 First of all, we don't think it's appropriate for the
3 Court to consider good time reductions when deciding how much of
4 a sentence Derrick is to serve. We don't know whether he's
5 going to get a good time reduction. We don't know whether it's
6 going to be applied to him. There have been a number of threats
7 made against Derrick throughout his time in custody, given some
8 of the things he did 10 or 11 years ago. We believe very
9 strongly that Mr. Avery's life is in danger when he goes to
10 prison. We don't know who he's going to be surrounded by, who
11 his cellmates are going to be, or what type of people might have
12 contact with him. And, of course, good time reductions are
13 contingent on a variety of calculations that the Bureau of
14 Prisons is going to have to make.

15 This is a case where Mr. Avery back in 1998 and 1999
16 did do some work with the F.B.I. And that's been -- that's
17 become public as a result of motions that were filed in this
18 case. Written decisions that were issued that were brought
19 by -- the motions were brought by prior counsel. And in the
20 Government's sentencing recommendation and memorandum they focus
21 on, in particular, the 1998 conduct, and the 1999 conduct, and
22 point out that Mr. Avery was -- while he was on pretrial release
23 from his Federal case that he had filmed these two movies, and
24 that he had been on the Jerry Springer show. And Your Honor has
25 a copy of the Jerry Springer show that was submitted in advance

1 by the Government as well. All of this behavior and action was
2 done in cooperation with the F.B.I. They knew that Mr. Avery
3 was doing it. And, in fact, even in the files that were
4 released by the Court when -- I think it was Judge Goodstein had
5 ruled on releasing these files -- even in those records it's
6 reflected that Mr. Avery was to enhance his image as a Snooky
7 character. And so he had -- to enhance that image, he had done
8 this Jerry Springer episode where he's coming out in this almost
9 comical outfit, and this comical jewelry that he's wearing.

10 He had done these movies that the Government mentions
11 in their sentencing memorandum. But none of this was foreign or
12 outside of the scope of what he was permitted to do, and even
13 being asked to do as part of his work. The F.B.I. wanted Mr.
14 Avery to portray this image as somebody who is a pimp Snooky, a
15 successful type person who can recruit drug dealers into the
16 fold, or recruit other people, so that the F.B.I. can make other
17 investigations.

18 I think people do age out of the criminal justice
19 system. And when we're talking about recidivism, one of the
20 factors for the Court to consider is whether the sentence that
21 Your Honor chooses to impose will sufficiently punish Mr. Avery
22 for his crimes, but also protect the public going forward.
23 People do age out of the criminal justice system. Mr. Wall has
24 taken the position that unlike drug dealing, or bank robbery, or
25 burglary, that a sex trafficker doesn't age out of his

1 profession. There's no empirical basis for that. In fact, the
2 Sentencing Commission itself recognizes that people do age out
3 of the criminal justice system. And there's never been a
4 distinction that I've seen in any of the studies that suggest
5 that somebody in Mr. Avery's position would be differently
6 situated.

7 The sentence that the Government is asking for would
8 result in Mr. Avery spending the rest of his natural estimated
9 life in prison. We don't think that he should get a life
10 sentence for what he did. We think that a sentence of a decade
11 is so substantial that it will have the proper impact not only
12 specifically on Derrick, teaching him that what he did was
13 wrong, but also generally.

14 People have called this case a high profile case. The
15 media has covered Mr. Avery's various Court appearances. And so
16 we would be remiss if we didn't also consider general
17 deterrence. But a decade is such a huge amount of time,
18 especially for somebody who's 45 years old, and looking at a
19 life expectancy of early 60's, that it does send that message to
20 the public that Courts don't take this behavior lightly. People
21 are punished very harshly for actions they did. And Mr. Avery
22 would be no different.

23 The 3553 factors I think are instructive. And we've
24 tried to touch on many of them in our memorandum. But Mr. Avery
25 grew up like a lot of people that this Court sees, without a

1 Dad. He grew up in a neighborhood that was violent, poor,
2 dangerous. Two of his brothers are serving significant prison
3 sentences because of violence that occurred within their
4 community. There were gang members who on a daily basis would
5 threaten the Avery family. And Derrick did what a lot of young
6 men do growing up in the shadows of their older brothers. He
7 would be in physical altercations when people were threatening
8 their lives. Gang violence, drugs, that sort of horrific
9 existence that many Defendants experience was something that was
10 a very real part of Derrick's life. And I think, frankly, he
11 strikes me as the kind of person that if he hadn't been raised
12 in that environment, if his father had been a CEO of a
13 Corporation, it wouldn't surprise me if that's the path that Mr.
14 Avery would have pursued.

15 He does care about his family very deeply.
16 Notwithstanding his difficult upbringing, he is a loving father.
17 His children all -- including the ones who are nearing adult
18 age -- all say the same thing. That he's somebody who has
19 supported them. They do care about him very dearly. And I
20 think significantly, Judge, he turned over his assets in this
21 case to the Child Support Division so that he could make some
22 effort towards the payment of the arrears on that. And so even
23 while he's in custody he's taken the steps that he can take to
24 try to make good on those obligations to help his children.

25 His family is going to be without him for a huge

1 period of time, whatever the Court chooses to do. Whether the
2 Court follows the Government's recommendation, or does something
3 different, or follows our recommendation.

4 The criminal history that Your Honor is looking at
5 is -- much of it is dated. We're talking about offenses from
6 the 90's. And by the nature of how the conspiracy has been
7 charged in this case, we have a lookback period that's about
8 twice as long as we would otherwise be looking back towards.

9 I think in terms of disparity, we have to think about
10 two important things. One is disparity amongst other
11 Defendants. And I would submit that this isn't -- this case
12 isn't the most horrific of cases that we could envision. We are
13 talking about -- at least as the Court mentioned earlier, a
14 minor who was 17 years old, for example. Certainly not an 11
15 year old, or somebody who was ripped from a home and forced into
16 an environment where they don't know the language, or don't know
17 the culture, or don't know the currency. We have cases -- and
18 we've cited them in our sentencing memorandum -- where human
19 traffickers -- and I use that word sincerely -- human
20 traffickers would put people in box cars or on trains and ship
21 the people to an environment where they don't have any ties or
22 any connection. They don't speak the language. Cases where
23 women are confined to rooms, and the would be johns are brought
24 to the room to have sex with those minors and those children.

25 We don't have that type of behavior. What we have in

1 this case is the vast majority of pre-existing prostitution.
2 Women who made decisions to be part of the Snooky clan,
3 so-to-speak. Women who were enamored by the -- many of the
4 women in this case enamored by the sort of public image that had
5 been portrayed in these movies and the Jerry Springer episode.
6 And so they don't deserve blame, of course. And Mr. Avery is
7 the one here who's being prosecuted and faces such a massive
8 prison sentence. But I think those are the types of things that
9 distinguish his case from certainly much more serious cases that
10 have been prosecuted in this country, and that the Court could
11 envision.

12 And also we have issues of equity. Shamika Evans, his
13 co-Defendant, hasn't been sentenced yet. I don't know what
14 she'll get. But I suspect that she'll be -- that there will be
15 a recommendation for a probationary disposition. We have
16 Mr. Avery, who has spent three years in County Jails throughout
17 Southeastern Wisconsin, and we have Miss Evans who's been out of
18 custody during this time. And I think it would be -- when we
19 talk disparities -- and we're talking, of course, disparities
20 amongst other cases that are much more serious that we've cited
21 in our memorandum -- but also disparities amongst a
22 co-Defendant, we're looking at the greatest disparity that there
23 could be. Miss Evans being given a probationary resolution when
24 she played a very important and central role in what took place
25 here, versus Mr. Avery, who's looking at the rest of his life in

1 prison. So I think that's an important consideration for Your
2 Honor to take into account.

3 I think that's another reason why a decade is
4 sufficient but not greater than necessary to address the 3553
5 factors to impress on Mr. Avery that the crime is serious. That
6 sentence would be seven and-a-half times longer than any prison
7 sentence he's ever -- any confinement sentence he's ever served.
8 That sends a message to a person. In fact, I would submit that
9 the three years that he spent in the County Jails have sent a
10 significant message. He lost his Grandmother, as the Court is
11 aware, not too long ago. And he was extremely close with her.

12 But we look out into the courtroom and Your Honor can
13 see also that there's a very strong family presence here. He
14 does have people that love him, that care about him, that will
15 support him. I think that Derrick has -- he has years left in
16 his life where he can do good, Judge. He can make a difference
17 in this world. He's already begun that process. He can
18 certainly cooperate in the future. We know that after any
19 sentence that's imposed, there will be a period of supervised
20 released. So the community will continue to be protected when
21 Mr. Avery comes out of prison in those years.

22 So I think for all those reasons, Judge, a sentence of
23 10 years in prison would be sufficient. I think that would
24 address all the criteria that the Court has to consider, and
25 would properly punish Mr. Avery for what he's done. I would ask

1 that we have a few family members say a few words at this point,
2 Judge.

3 THE COURT: Okay.

4 MR. COTTON: Could we start with Regina Jordon? Is
5 Regina Jordan's mother here?

6 THE DEFENDANT: Yep.

7 THE COURT: Speak into the mike. And first state your
8 name and spell your last name.

9 MS. JORDAN: Your Honor, my name is Carrie Jordan,
10 J-O-R-D-A-N.

11 THE COURT: And Carrie, how do you spell Carrie?

12 MS. JORDAN: C-A-R-R-I-E.

13 THE COURT: Okay. Go ahead.

14 MS. JORDAN: Your Honor, I just gave you my name, but
15 I just wanted to tell you I've been knowing Mr. Avery most of
16 his life. And when I think of him, and have thoughts about him,
17 I think of only good things, because he is a good person. Don't
18 misunderstand me now, because I know we all make mistakes, and
19 we all, you know, make choices that we have to suffer the
20 consequences for. And I'm not trying to say that he hasn't, or
21 wouldn't, or won't again. But he has children out there that
22 loves him. He has family out there that loves him. He's a
23 person that does everything -- I've only known him to do good
24 for people. Help people. All people. And when he was helping
25 these people, there wasn't any discrimination. He helped black,

1 white, little children, old people, like myself. In times that
2 I really needed it, he was there. And he is really not my
3 grandson, but he seemed like my son to me when he was at home.
4 I never saw any bad about him. And being a senior I've seen
5 much injustice in this system. I've also seen some with him.
6 But the thing that's got Derrick I think here is greed,
7 prejudice, antisocial attitudes, and corruption. The only
8 reason he's here today is because of some of these things. And
9 because we love him, that's why we're here.

10 I'm praying and asking you, Judge, to please be
11 lenient on Mr. Avery. He served a certain amount of time. He's
12 learned a lot. The State, the system, has taught him a lot. He
13 has learned a lot from the letters, and books, and different
14 things that we have sent him. And he is a changed person.

15 So I'm asking you, please -- I remember reading at
16 Jeremiah I think it was 10:23, it's not for a man to direct his
17 own steps. So the system has helped him to start his steps in
18 the right direction. I pray and ask that you please be lenient
19 and allow us now, with the help of God, to let him continue to
20 walk in the direction he should go. Thank you so much.

21 THE COURT: Okay. Thank you.

22 MR. COTTON: I'd ask that his oldest daughter, Melania
23 Avery make her statement.

24 THE COURT: Okay.

25 MR. COTTON: She had written out her statement, but

1 it's apparently on her phone, so she's going to have to look at
2 that when she speaks.

3 THE COURT: State your name.

4 THE WITNESS: Melania Avery.

5 THE COURT: Okay.

6 MS. AVERY: M-E-L-A-N-I-A. Hello. I'm Melania Marjan
7 (phonetic), Derrick's oldest daughter. I didn't expect to
8 initially speak for this occasion. I would have never thought I
9 would be having to speak for anything like this. Yes, I'm
10 familiar with who Snooky is, but I'm more in tune with Derrick,
11 my father.

12 THE COURT: Can you get the mike a little closer to
13 her?

14 MS. AVERY: Yes, I'm familiar with who Snooky is, but
15 I'm more in tune with Derrick, my father. I remember growing up
16 I always wanted to know who this man was that would draw me
17 mini-mouse pictures and send them in envelopes with long letters
18 attached. As I got old older, I came to know about this
19 semi-father of mine. The semi-absent father of mine. My mother
20 expressed -- my mother expressed a melting pot of emotions when
21 I would ponder about him, and his whereabouts. Continuously ask
22 questions that she didn't have the need -- that she didn't have
23 the want or need to answer, which led to us having a strained
24 relationship. We both admit that she kept me away from him
25 because she felt that Snooky wasn't the man that she was in love

1 with and had a daughter with. For me it was an awkward
2 relationship between my Dad and I. Although he wasn't there as
3 much as I felt he should have been for me physically, he was
4 there for me mentally, spiritually, and emotionally to make up
5 for it. He instilled in me at an early age that I was royalty
6 and a child of God. He showed me the good and bad sides of life
7 in this cruel and evil world. (Indiscernible) He kept it real
8 with me in ways my mother never did. And I wanted her to, but
9 she didn't.

10 When I was molested he was my superman. He made me
11 feel I was still valuable and worth something. I think that's
12 why my Dad and I share such a close bond. Me being the oldest,
13 a product of himself and my mother, I'm a replica of both of
14 them. In so many ways him. I'm just like my Dad from the
15 skinniness of our frames, the shape of our nose, to our
16 demanding voices, headstrong attitudes, and our family oriented,
17 caring, vibrant personalities, even down to our razor sharp
18 tongues and short fused attitudes are the same.

19 My father is not a saint, nor am I to portray him as
20 one. The good outweighs the bad when it comes to him and his
21 family. Something some people don't know about, he tells us,
22 all his kids, no matter what we are Averys, meaning no one --
23 nothing can come in between. Our greatness is beyond other
24 human beings. He spoke things to me that no one has ever yet to
25 say. If it wasn't for the street life, he could have been a CEO

1 of any business. And I mean any. I don't think -- I think my
2 father is a genius, but he was taken by the streets.

3 I know the character Snooky, but that's not my father.
4 Derrick is the opposite to me. To us. His mother, his
5 children, his family. He's not malicious, inconsiderate, or
6 this evil creature described. I don't even read (indiscernible)
7 that has been published about him.

8 These events have brought an enormous dark cloud over
9 my life. I found out I was pregnant the same week my father was
10 arrested. It felt like everything was going good, and then just
11 turned sour. My mother and I never saw things eye to eye. And
12 only person that didn't judge me, always listened to me, and
13 gave me guidance and motivation was taken from me. Here I was,
14 left to raise a baby, a boy at that. The main man in my life
15 was gone, although I was blessed with the perfect one to follow.
16 Not having my father around to share these moments hurt more
17 than before. (Indiscernible) yell and scream because no one
18 understands and he just listens. I miss that.

19 (Indiscernible) to have him teach me how to potty
20 train my son. Caleb irritates me because he's hard headed and
21 doesn't listen. He'll never ever be able to keep his children
22 in close reach around each other, loving and caring for them,
23 showing and teaching them the rights and wrongs, good and bad
24 things like he taught me. (Indiscernible). I sit back and
25 think with my father being in this situation, not being around,

1 we have to rely on each other. The kingdom of greatness, love
2 and prosperity that my father envisioned and attempted to
3 create. But what God planned for him has now fallen on me. I
4 question and wonder why am I given such a heavy burden? But I
5 realize God doesn't put more on us than we can handle. Every
6 day is a test. My father taught me that when given a chance,
7 you have to make it your best. And if you don't fall, you shall
8 succeed.

9 Daddy, when I look at you in your situation, like me
10 in my situation, I see history repeating itself. Except I won't
11 let the streets corrupt me. You taught me to be different. Who
12 I'm supposed to be. Not a product of my environment. If only
13 we practice what we preached. But we're adults. And we correct
14 ourselves (indiscernible) wrong and accept the consequences and
15 reactions for our actions. When given the chance, just make it
16 right.

17 I love you regardless of what's been said
18 (indiscernible). I promise (indiscernible) family will stick
19 together.

20 THE COURT: Thank you.

21 MS. JORDAN: My name is Regina Jordan, R-E-G-I-N-A,
22 J-O-R-D-A-N. Your Honor, Judge Adelman, I'm the oldest of all
23 the women in Derrick's life. When I met him, to me he was a
24 cornball. He likes putting cars together. Things like that.
25 Messing with electricity. Shining up automobiles until they

1 sparkle, and DJ'g.

2 I was an exotic dancer and did a lot of other things
3 in my past that I'm not proud of. But today my kids' father --
4 and I say my kids, because I have my oldest son by Derrick
5 Avery, Senior. And my daughter is 26 years old, Shakeba
6 (phonetic). He took her, and adopted her, and said she was his
7 own. And today you cannot tell her that he's not her father.

8 My kids' father is being sentenced today and punished
9 for human trafficking. It's not fair to punish him for this,
10 when a lot of the women in his life were able to come and go as
11 they please. They, like myself, chose a lifestyle that was not
12 the best. They even sometimes got close to me and spent time
13 with me. I've watched all their children, and I've baby-sit for
14 them. So just like myself, they had the opportunity to change
15 their life, as I did, and do something better and positive.

16 If he should be punished for anything, it should be
17 domestic violence, tax fraud, or something of that nature. He
18 didn't profit of his kids' Mom, because he took good care of
19 them, their Mom, as well as his 20-some kids. Your Honor, I
20 went downtown on many occasions and paid child support for their
21 children. (Indiscernible) profit from or purchased was his
22 daughter's and kids' moms. That's what she wanted, and that's
23 what he gave her.

24 I kept in touch with several of his kids' Moms, who
25 were supposed to testify. I gave you earlier a letter from them

1 stating that they love, they care, they miss him, and they want
2 him home soon. Your Honor, those kids' moms, just like myself,
3 we're not uneducated. We're women who didn't know better. If
4 they were victims, they were victims of being in love with a man
5 who was attracted to exotic dancers, sexy women, and women who
6 chose the nightlife for a living. Why should we all, including
7 my children and myself, be punished for that?

8 So please, Your Honor, when you sentence him please
9 keep in mind that when you sentence him, you sentence all of us.
10 That's all I am asking, is that he get fair treatment. His life
11 in his danger, as well as my son's life. And my son has been a
12 target of violence since this. He's doing a lot better. But I
13 know you have to do your job, and impose justice. We're not mad
14 at that. We just want him home soon. Thank you.

15 THE COURT: Okay. Thank you. Does your client want
16 to make a statement?

17 MS. KUCHLER: Yes, Your Honor.

18 THE DEFENDANT: Your Honor, a lot of people may not
19 believe anything that I say. And a lot of people may think it
20 don't come from my heart. But I'm sorry. I'm sorry to all my
21 kids' mothers. I'm sorry for everybody involved in this case.
22 We decide to get into a crime that we didn't look at was doing
23 no wrong. Because it was our own bodies. It was ourselves.
24 But it is wrong. I can't take back my actions or my conduct. I
25 can't rewind the time. I've tried to turn around with -- my

1 relationship with all my kids' mothers and tell them this won't
2 last long. And one day I'm going to have to explain to the
3 world who is Pimp Snooky. And the day has come. My face has
4 been paraded on many box covers, on many videos, as Pimp Snooky.
5 But that's not who Derrick Avery is. Pimp Snooky is a brand,
6 just like Pepsi or something. It makes money. But it wasn't to
7 make money off of the women that I like, the women I care for,
8 the women that I have kids with. And not just one. I have 3,
9 4, 5 kids that I miss. I'm sorry. I'm sorry. I'm sorry for
10 the embarrassment that I've brought upon my mother, my auntee,
11 my kids' mothers' mothers, their Grandmothers, their auntees,
12 all the ladies. I'm sorry.

13 THE COURT: Okay. Thank you.

14 MR. WALL: Your Honor, there is a family member, Miss
15 Patricia Myers, who would like to address the Court. She can
16 sit next to Mr. Washington here.

17 THE COURT: Okay.

18 MS. MYERS: Thank you, Your Honor.

19 THE COURT: State your name and spell your last name.

20 MS. MYERS: Patricia Myers, M-Y-E-R-S.

21 THE COURT: Okay.

22 MS. MYERS: Condolences to your family.

23 THE DEFENDANT: Thank you.

24 MS. MYERS: Well, I've listened to a lot. And I did
25 send a letter to you. I believe everyone has read it. Thank

1 you. And I was listening to Mr. Avery's family, and I realize
2 that it isn't just my family.

3 He says he learned a lot. I think he already knew a
4 lot. He must have been a very intelligent person to be able to
5 con all the young women into doing his bidding. Leaving their
6 children. Taking his abuse. Taking them away from the families
7 that loved them. Not allowing them to keep in touch. I had to
8 hire a private detective. My heart has been broken. My
9 Grandmother used to say you can't die from a broken heart. Oh,
10 yes, you can. Or you wish you could.

11 And I'm watching a little girl that was dragged around
12 with them like a little animal, almost, who now is suffering.
13 Who didn't get to go to kindergarten, who didn't get to go to
14 first grade, who now is failing all her classes at 12 years old.
15 She was not allowed to do her number facts.

16 I'm not totally blaming that on Mr. Avery. But let me
17 tell you, the girls were afraid. And I was told don't say
18 anything mean to him. He'll hurt you. Now, I believe that with
19 all my heart, because he never hurt me, physically, but he
20 certainly broke my heart.

21 And why should he be rewarded for the heartbreak he's
22 brought to the girls' families? To his family? And he expects
23 to be rewarded for that? I'm sorry. The girl in question that
24 I'm talking about came home with everything she owned in a
25 garbage bag. Everything he took from her that she had before,

1 including her pride, her human dignity, that was gone. And she
2 has worked for the last five years to get out of that, and to
3 try to be a decent human being. She's gone to school. She
4 wants to be a civil rights attorney. Guess what happened when
5 she went for her apprenticeship? Her background check refused.
6 Anything she wants to do in law enforcement or in an attorney's
7 area in a courtroom like this. Never, never, will she be able
8 to get a political position.

9 Everything -- she's had to reduce herself at this time
10 to food stamps. Not that that's any crime. Please don't
11 misunderstand me. I'm not a snob. I've been there, too. I've
12 not grown up in an easy life. But I can't forgive for the
13 things that he put me through. Having to hire a Detective,
14 having to go to another State just before that house was raided.
15 Thank God, within 15 minutes, I got that little child out of
16 there. Fifteen minutes before it was raided. And you know what
17 I was told? That's her stupid fault.

18 He doesn't keep any paper trails. But the girls do.
19 And those paper trails will follow them as long as they live. I
20 don't think, at 65, if that's when he's released, or whenever it
21 is, he will be any different than he is today. That's all he
22 knows. What else does he know, except to use, and con, and
23 cheat. Thank you for giving me the opportunity to speak.

24 THE COURT: Thank you.

25 MR. WALL: Your Honor, thank you. As to sentencing

1 comments, and the sentencing factors, pretty much all of my
2 comments already appear in the sentencing memorandum that we
3 filed with the Court on Wednesday. Some of those facts do bear
4 repeating.

5 First of all, Mr. Avery is a pimp of national
6 significance, and international reputation. He may have been
7 born and raised in Milwaukee, and may have used this city for
8 many years as his base of operations, but it's very clear that
9 he sent his prostitutes to cities throughout this country to
10 earn money for him in prostitution. And this is a man very
11 proud of his national and international reputation as a pimp's
12 pimp.

13 On his left arm appears a tattoo in full color of a
14 naked, high heeled woman, lying on her back, holding a globe,
15 her legs spread wide open so as to show more clearly, to anyone
16 who looks at his tattoo, the cash flowing from her vagina, into
17 the open hands of another. And that other is most certainly
18 Derrick Avery.

19 On his right arm is a second tattoo. Also in full
20 color. A tattoo of the globe, the world, with a diamond in the
21 middle of it. Surrounded in capital letters with the words
22 "international pimp". He is an international pimp. And he
23 proudly advertises this. He has never had any shame about what
24 he's done, and how he's earned his money.

25 Avery was crowned Pimp of the Year in the late 1990's

1 at the National Players Ball held here in Milwaukee at Serb Hall
2 on Oklahoma Avenue. We have a video of that celebration,
3 complete with the arrival of stretch limousines carrying pimps
4 from all over the country, along with their chief prostitutes,
5 bedecked in full pimp regalia, with jewelry covering their
6 hands, their fingers, their wrists, and dangling from their
7 necks. Real jewelry. Real money. And Avery was the king of
8 this celebration. And it ended with him being crowned and
9 receiving a giant trophy as the nation's pimp of the year. No
10 one at the F.B.I. attended this celebration or cast a vote
11 making Mr. Avery the Pimp of the Year at Serb Hall.

12 He and his prostitutes appear on the back DVD cover of
13 the 1999 Hughes Brothers movie American Pimp. A movie that
14 anybody can rent from Netflix or purchase from Amazon-dot-com,
15 among other retailers. Nobody at the F.B.I. encouraged his
16 participation in this movie, and I have seen no information that
17 the F.B.I. knew he was being filmed. He also appears in the
18 documentary Pimps Up, Ho's Down, yet another commercial video
19 documenting, and ignorantly and irresponsibly glamorizing the
20 pimping lifestyle. Again, nobody from the F.B.I. encouraged his
21 participation in this documentary. I have seen nothing in the
22 F.B.I. files that tells me they knew he was involved in this.

23 In July of 1999, while he was on Federal bond awaiting
24 sentencing just a few months later in this very building, he and
25 three of his prostitutes appeared as themselves on the Jerry

1 Springer show. This Court has a seven minute clip of that show
2 in which Avery, on national T.V., brags about his pimping
3 lifestyle, proudly shows off his jewelry, and declares that as a
4 result of his prostitutes' work, he is a, quote, rich man.
5 Again, the F.B.I. did not encourage this, and I've seen nothing
6 that tells me they were aware he was doing this.

7 Finally, and almost unbelievably, he's profiled in a
8 BBC documentary called True Stories, Pimp Snooky, filmed in 1999
9 here in Milwaukee, also while he was on bond in the Federal
10 case, and then broadcast on H.B.O. in England and I believe
11 throughout Europe in the year 2000. The defense and prosecution
12 teams have seen this documentary, and the Court has two reviews
13 of it. Again, Derrick Avery, Pimp Snooky, is a sex trafficker
14 of national significance and international reputation. He is a
15 pimp's pimp.

16 I also want to put just a bit of a personal touch into
17 my comments and talk about my interactions with some of the
18 women who were victimized in this case. Women that Derrick
19 Avery turned into prostitutes. Females that he seduced,
20 manipulated, recruited, programmed, trained, disciplined, and
21 physically abused in his life destroying pursuit of the money
22 that he could get through their sexual services.

23 Mr. Cotton talked about Shamika Evans and said we have
24 a gross disparity here between Shamika Evans and Derrick Avery.
25 All of us on the prosecution team, the Agents, prosecutors,

1 everybody involved, considers Shamika Evans to be Derrick
2 Avery's biggest victim of all. She was 18 years old when he
3 brought her into his stable. Gave her three children. And she
4 stayed with him through his arrest, and her arrest, at the end
5 of July of 2009 on our Federal criminal complaint here.

6 She debriefed extensively. Many, many, many days.
7 And I sat through a number of those. And on numerous
8 occasions -- her memory is so sharp -- she would talk about
9 beatings. Where they occurred, what Mr. Avery used to beat her,
10 who was there. And then she would show us, on whatever part of
11 her body it was, or various parts of her body, the scars she had
12 from each particular beating. She would point to a scar on her
13 face and say this is when he hit me with a lamp. She would
14 point to another scar on her face, and she would say this is
15 when he beat me with a broomstick. She would point to another
16 scar, maybe on her leg, and say this is when he stomped me with
17 his alligator shoes. And she would go on and on. A memory I
18 guess because this is seared in her memory. Just an incredible
19 memory. Details of the beatings. And she stuck with him. And
20 only because of him was she involved in the criminal conduct for
21 which she has pled guilty.

22 Because of Mr. Avery she's now a convicted sex
23 trafficker. She must register for the rest of her life.
24 Because of Mr. Avery, she faces a termination of parental rights
25 proceeding out of Las Vegas, Nevada. Clark County. It appears

1 almost certain that because of Mr. Avery she will lose her
2 parental rights to three of her children. A disposition that I
3 have often been quoted as calling the civil death penalty.

4 The victim described in Count 3 of this Indictment is
5 prostituted Child "B". She was 17 years old when Avery spotted
6 her in Milwaukee's downtown Greyhound station. I can tell the
7 Court that just by looking at her, Derrick Avery knew that she
8 was an easy mark. She looked lost and alone, which she was.
9 Avery charmed her, befriended her, and through his incredible
10 skills at psychological manipulation, he questioned her in a
11 caring, nonjudgmental way, thereby learning her innermost
12 feelings, secrets, fears, and pain. He showed an interest in
13 this 17-year old runaway that appeared to her to be genuine,
14 loving, and caring.

15 He took her shopping that evening. Bought her
16 clothes, personal items, hygiene products. Convincing her,
17 during all of this, that it would be best for her -- because
18 maybe she's not too responsible -- for safekeeping he took from
19 her her Wisconsin identification card; her Social Security card;
20 her personal address book containing all the information of her
21 friends and family; her purse, which contained the other
22 remnants of her life. Then he took her home, introduced her to
23 the other women at the house -- all of whom were his
24 prostitutes -- and then he had sex with her.

25 Contrary to what Mr. Cotton stated, prostituted Child

1 "B" had never prostituted before. She had never engaged in
2 prostitution. But within a week, under Mr. Avery's sway, she
3 was traveling to Chicago every single night to work as a
4 prostitute for Mr. Avery.

5 The Defendant's physical abuse of this child, her
6 escape from his home, and her flight from Milwaukee for her own
7 safety, and then safety of her family, is detailed in the
8 Government's sentencing memorandum. And I don't need to repeat
9 it all here. But the details are, to quote Mr. Cotton,
10 horrific.

11 There is another woman I want to briefly talk about.
12 She's identified as prostituted female number 10. Agents and I
13 met her in Milwaukee in November of 2009. And after she had
14 been served with a Grand Jury subpoena in Las Vegas, while she
15 was sitting in jail on a prostitution arrest, she flew to
16 Milwaukee for her testimony. She appeared in our office on
17 November 2nd of '09, wearing a business suit, with her luggage
18 on a hand cart. She looked like an executive. Very soon after
19 the Agents and I began to interview her and prepare her for the
20 Grand Jury, I realized, as we all did, that she was extremely
21 smart. She also had a very endearing, and delightful,
22 self-deprecating sense of humor. Again, showing her
23 intelligence.

24 She said that she met Avery in October of 2007.
25 She was working in a strip club in Minneapolis. She was a

1 dancer. She was 20 years old. She related that Mr. Avery and
2 his entourage of men and women arrived at the club driving new
3 and very expensive B.M.W. and Mercedes Benz automobiles. She
4 was immediately impressed by all of this.

5 His seduction of her then began. He and the others,
6 including his veteran prostitutes that were with him,
7 immediately targeted her. And she is, quite frankly, beautiful.
8 After getting to know her, Avery and his group began bragging to
9 her about their Las Vegas lifestyle. The glamour, and the
10 glitz, and all the money that they had access to. The women in
11 the entourage told her that they had everything that they
12 wanted, and she could have it, too.

13 She went back with them to the house that they were
14 staying at and spent the night. She told me I was infatuated.
15 And their seduction continued. One of the other women told her
16 that if she came to Las Vegas with them, quote, you can have
17 more money than you could ever imagine. And the power to do
18 whatever you want, whenever you want. Unquote. All, of course,
19 a lie.

20 Eventually Avery took her aside, and he talked to her.
21 By the time she flew to Las Vegas with the group, she knew that
22 she'd be prostituting with the other women for Derrick Avery.
23 Again, contrary to what Mr. Cotton said, this woman had never
24 engaged in prostitution until she met Derrick Avery.

25 Again, because I was so impressed with her, and was

1 thinking of the other -- I guess to me -- better and more
2 healthy career opportunities that this young lady should have
3 had available to her, and to someone of her intelligence,
4 strength, poise, and charm, I asked her a bit about her
5 background and her childhood. During the course of our
6 conversation, she told me that she had run away from home at the
7 age of 15. About five years earlier. I guess foolishly I asked
8 her why she had done that. And she started to sob. And she
9 broke down. She said my stepfather began having sex with me
10 when I was 9 years old, I couldn't take it anymore.

11 These are his victims. Mr. Cotton says that this is
12 not the most horrific sex trafficking case, but it is in this
13 building. Of the 7 individuals we've convicted under this
14 Statute, individuals we have prosecuted, investigated, indicted,
15 and convicted here in this building, Mr. Avery's conduct is by
16 far the most horrific, the most brutal, the most inhumane.

17 The Government's recommendations. Under the
18 guidelines, for the reasons detailed in the sentencing
19 memorandum -- and if a formal 5K1 is needed here, consider it
20 being made right now -- but I ask that the Court in handing down
21 a sentence for Mr. Avery do two things. First, is to send a
22 message of general deterrence to other men who are involved in
23 or contemplating becoming involved in this dirty, sickening
24 business. To show them that a long sentence awaits them sooner
25 or later at the end of the road.

1 The second thing that I ask the Court to do in its
2 sentencing is to be the voice of every child and adult who's
3 been prostituted by Avery and other men like him. Be the one,
4 Judge, to voice their suffering. Their physical, emotional,
5 psychological, and mental pain and agony. Their debasement and
6 degradation. Give voice to their embarrassment and humiliation.
7 Their unending nightmares, both while awake and during their
8 disturbed sleep. Give life in your sentence to the lives
9 destroyed by this man and others like him. Be the voice of
10 these women. Make your sentence reflect their voice.

11 That sentence should be 20 years imprisonment on
12 Count 3, and a concurrent term of imprisonment of 5 years on
13 Count 1. No fine. Five years supervised release. Thank you,
14 Your Honor.

15 THE COURT: Okay.

16 MR. COTTON: Just a brief rebuttal, Judge. First of
17 all, with respect to the F.B.I.'s work with Mr. Avery and their
18 knowledge of what he was doing, I'll quote from the unsealed
19 report. And this is when the F.B.I. was asking for -- the
20 F.B.I. had a \$20,000 budget to help Mr. Avery promote the Snooky
21 imagine in 1998 and '99. At one point they had asked for \$500,
22 noting that Mr. Avery's credibility and ability to gain the
23 trust of other individuals that they wanted to prosecute
24 depended largely on his ability to maintain his image as a
25 successful, rich pimp. The F.B.I. knew that Mr. Avery was

1 portraying the image of a successful, rich pimp, and had a
2 \$20,000 budget to assist him with that.

3 Mr. Wall spoke of a couple of women. We heard from
4 one grandmother here. And that's the only in-person testimony
5 we have to the impact that's occurred. And mention one other,
6 and that's Janelle Lewis, who took -- was so enamored with the
7 Snooky lifestyle, that she took a bus from Washington D.C. with
8 \$5,000 in her pocket, showed up in Milwaukee with the tattoo on
9 her arm of Snooky, and searched around until she found Mr.
10 Avery.

11 We would ask the Court to impose a sentence along the
12 lines proposed in our memorandum. We think it's a significant
13 punishment for any person to endure.

14 THE COURT: Okay. Thank you. I'll be back
15 momentarily.

16 (Whereupon a recess was called by the Court. Upon
17 conclusion of the recess, the proceedings continued as follows:)

18 THE COURT: Okay. In imposing sentence I consider the
19 3553(a) factors. And then after considering them I impose a
20 sentence that's sufficient but not greater than necessary to
21 comply with the purposes of sentencing. Which are just
22 punishment, deterrence, protection of the public, and
23 rehabilitation of the Defendant.

24 Starting with the nature of the offense, from January,
25 2001, to July 31st, 2009 -- and I know just -- that that period

1 is -- some of the events that the counsel have talked about with
2 respect to media appearances, and whether or not he was working
3 with the F.B.I., really that's all before the charged period.
4 So to some extent -- I mean, I guess I'm allowed to consider
5 that, but I don't really see that as particularly significant
6 for purposes of the sentence, which covers this charged period
7 of July -- or the conduct involved begins in January, 2001, and
8 goes to July of 2009. And offense is that the Defendant engaged
9 in sex trafficking, including trafficking of minors. And he
10 conspired with others, including some of his prostitutes to
11 recruit and transport minor and adult females, knowing that
12 force, fraud, and coercion would be used to cause these females
13 to engage in commercial sex acts. And the monies then derived
14 from these acts would be given to the Defendant or to others for
15 the Defendant's benefit.

16 The Defendant directed his prostitutes that were most
17 trusted to train new prostitutes in the business so that they
18 understood the rules. And this training was also known by the
19 people who were involved in it as programming. And included --
20 included a number of rules. Among others, the women always had
21 to walk behind the Defendant with their heads bowed -- or not
22 always, but when they were in the presence of other men. The
23 women could never talk to another man involved in the
24 prostitution business. They couldn't look another man in the
25 eye unless it was a man for whom the prostituted female was to

1 provide sexual services for money. They were never to talk back
2 to the Defendant, or talk disrespectfully to him while in the
3 presence of others, including his other prostituted females.
4 They weren't to have any boyfriends except for the Defendant.
5 They were always to use a condom during a prostitution date.
6 They weren't to take off their clothes until the date was naked.
7 They were never to use alcohol or drugs before a night of
8 prostituting. They were always to give the Defendant, and never
9 keep for themselves, any of their earnings from prostitution or
10 from prostitution related theft. And they were always to call
11 the Defendant Daddy.

12 The Defendant also physically assaulted these
13 prostituted females for various purposes, including to make them
14 work harder, to punish them for violating the rules of
15 prostitution, to instill discipline in them and the other
16 prostitutes who observed the assaults, to prevent them from
17 leaving his sex trafficking business. And to create a constant
18 atmosphere of fear, such that they always did exactly what he
19 told them to do. As discussed in the presentence, and as
20 Defendant admitted in the Plea Agreement, he physically
21 assaulted the females in a number of ways, including beating
22 them with fists, with wooden and metal brooms, pool cues, pans,
23 chairs, and leather belts. Slapping them in the face
24 methodically, back and forth, using his open hands. Stomping
25 and kicking them with his alligator shoes. Placing a phonebook

1 on their backs and striking it with a baseball bat. Subjecting
2 them to the hot treatment. That is pouring rubbing alcohol on
3 their bodies and lighting it. And subjecting them to the cold
4 treatment. That is holding them down in a bathtub filled with
5 ice cubes for a certain period of time.

6 The Defendant also sought to learn personal
7 information about them and their families, so as to threaten and
8 instill fear in them, should they try to leave to tell law
9 enforcement about what was going on. The Defendant pressured
10 the prostituted females to earn a certain amount of money or a
11 quota each night, or each week. He instructed the females to
12 wire the proceeds of their prostitution activities to Milwaukee
13 through Western Union. He prevented the females from obtaining
14 medical care for their injuries after he assaulted them. He
15 also instructed them to steal belongings from their dates, such
16 as cash, jewelry, credit cards, and other valuables. He further
17 instructed his prostituted females to never mention his name if
18 they were arrested. And he threatened to kill them or their
19 families if they did.

20 The Defendant also impregnated many of the females.
21 He indicates that the sex was consensual, and he disputes that
22 he had children with them to gain more control over them.
23 Nevertheless, several of the women with whom he had children
24 indicated in sworn statements that the Defendant, like other
25 pimps, had children with his prostitutes so as to give them

1 more -- give him more control over them.

2 The Defendant transported or caused to be transported
3 various of his prostitutes to other locations throughout the
4 country to earn money for him.

5 Regarding the use of minors, Jacqueline "M" began
6 prostituting when she was 14. She met the Defendant in 2002 in
7 Milwaukee. And then was prostituting within a few weeks. First
8 in Chicago, then in Las Vegas. Eventually she left the
9 Defendant and prostituted for another pimp for about a year
10 before returning to the Defendant, who had relocated to Las
11 Vegas. In Las Vegas she earned up to \$3,000 a night, and on
12 some occasions brought \$10,000 or more back to the Defendant.
13 At the Defendant's direction she sent prostitution money through
14 Western Union to individuals that he identified.

15 Like the others, the Defendant was abusive and
16 threatening with her, and she saw him physically assault other
17 of his prostitutes. The Defendant struck her at times in the
18 beginning of her relationship with him. She stopped
19 prostituting for the Defendant just before his birthday in
20 November, 2007. I note that the Defendant does not object to
21 the information about Jacqueline "M" set forth in paragraphs 46
22 through 48 of the presentence report. Rather, he states that he
23 wants the Court to be aware that when she left him, it was her
24 personal decision. That she is still prostituting, and that she
25 was the first person to put money in his jail account.

1 Sierra "G" stated that she met the Defendant in
2 Milwaukee at the Amtrak station when she was 14. And she and
3 Shamika Evans talked to her about working for the Defendant as a
4 prostitute. At that time Sierra was working as a prostitute for
5 a different pimp, and traveling to Chicago to work. She went
6 with the Defendant and Shamika to a house on 29th Street in
7 Milwaukee, where she met Jacqueline "M". There Shamika told her
8 the Defendant's rules. Sierra stated that she told the
9 Defendant that she was 14, although he denies that. She
10 traveled to Chicago nearly every day to prostitute for the
11 Defendant, usually with Jacqueline and Shamika. Eventually they
12 relocated to Las Vegas. She indicates that prior to her 18th
13 birthday she also traveled to other cities to prostitute for the
14 Defendant, including Miami, New Orleans, and St. Paul. The
15 Defendant denies that.

16 She also stated that the Defendant beat her on
17 numerous occasions for not following the rules; being
18 disrespectful to him; or not making enough money.

19 In 2006 she was arrested for prostitution in Las
20 Vegas, and she gave a statement to law enforcement about her
21 work as a prostitute for the Defendant. In spring, 2009, the
22 Defendant obtained the Police reports with her statements about
23 him, and in response he beat, punched, and choked her, and then
24 tied her up and locked her in a closet. He also threatened to
25 kill her oldest child. She eventually fled from him. Sierra

1 "G" has one child with the Defendant.

2 In his objections to the presentence, the Defendant
3 offers a one sentence objection to Paragraph 54 which sets forth
4 that this abuse after her arrest -- he says, quote, Mr. Avery
5 denies he was violent with Sierra, quote. And Donald
6 "B" confirmed that the Defendant beat Sierra in his statement
7 which is set forth in Paragraph 90 of the presentence.

8 Finally, in June and July of 2004, the Defendant
9 encountered Mary "S", who was then 17, and a chronic runaway,
10 and convinced her to become a prostitute for him. From that
11 point until August 8th of 2004 she traveled to Chicago nearly
12 every night to prostitute. In early August, 2004, the Defendant
13 decided to move his stable of women to Las Vegas. Mary
14 objected, because she didn't want to be so far from her family.
15 In an effort to force her to go, the Defendant beat her first
16 with his hands and his belt, then with his shoe, and then with a
17 wooden broomstick. He beat her over the head, and everywhere on
18 her body, eventually breaking the broomstick. After breaking
19 the wooden broomstick, he grabbed an aluminum broomstick and
20 continued beating her eventually, bending it. During the course
21 of the beating the Defendant took a break and called a friend.
22 He told the person on the other line he would pay for that
23 person to kill Mary's father. Quote, I'll give you \$2,800 to
24 put a bullet in this girl's Daddy's head, quote. Eventually the
25 Defendant fell asleep. Although she had no shoes, Mary exited

1 the house, leaving her purse and her belongings in the house.
2 She found a gas station nearby, and asked a man pumping gas for
3 help. He took her to her mother's house. Her mother then
4 called the Police, who came to the house, took pictures of her,
5 and interviewed her. While the Police were there, the Defendant
6 called the house and her mother answered the phone. A bit later
7 her father called the house and said that the Defendant had
8 called him complaining Mary had gone to the Police, and that she
9 should call the dogs off because she was opening doors that
10 couldn't be opened -- or I'm sorry, opening doors that shouldn't
11 be opened. That's a quote.

12 After that she stopped cooperating with the Police,
13 and would not go to the station with them. She was worried
14 about her father's safety, as he was disabled, and the Defendant
15 knew that. Mary left Milwaukee and did not return for almost a
16 year.

17 The presentence report sets forth more statements from
18 the women, but the statements I've read, or the incidents that
19 I've already talked about, sort of gives a sense of the violent,
20 abusive, and degrading manner in which the Defendant treated
21 these women. And the tactics that he used to keep them in line.

22 Sierra "G" submitted a victim impact statement to the
23 U.S. Attorney's Office, which is set forth in Paragraph 96. She
24 says that she's fearful on a daily basis. Doesn't trust anyone.
25 She's trying to do the right thing by going to school and

1 supporting her two children. She met the Defendant when she was
2 14, and has never really attended school. She has trouble
3 getting jobs because of her background. She doesn't receive
4 help from her family. She and her children have been homeless
5 at times, and her family only wants her money. She hopes the
6 Defendant's punishment will fit his crime. She feels that her
7 life has been ruined forever. She wishes she could forget about
8 all that happened to her with the Defendant.

9 In response to Paragraph 96, the Defendant states that
10 Sierra was prostituting at age 11 before she met him. He says
11 she's had more prostitution arrests since she left him, and that
12 even during the time she worked for him, she also worked for
13 other pimps. But, you know, I'm not sure how this actually
14 lessens the trauma of what happened to her with the Defendant.

15 In his statement to the presentence writer, the
16 Defendant acknowledged the facts of this case. Acknowledges
17 that the facts are substantially true, and he admits his guilt
18 and involvement. He indicates that he's cooperated with the
19 Government, and explained his involvement. He says his
20 involvement in this offense came about gradually. He became
21 widely known as Pimp Snooky, and became addicted to the
22 attention he received. He says that several years ago the
23 F.B.I. asked for his assistance in other cases, and he felt that
24 he had a certain authority and credibility. He was encouraged
25 to maintain his image as a successful and wealthy pimp, but he

1 never expected Pimp Snooky to become such a celebrity. He
2 states that he sincerely wants to help others in his life at
3 this point, and no longer wants to be involved in prostitution
4 or pimping. And wants to speak and lecture about this and tell
5 people how harmful the business is.

6 He believes the true victims in this case are his
7 children, who are being raised by single mothers and without the
8 support of a father. He also says he wishes to apologize to the
9 women involved in the case. He's proud of the fact that he took
10 responsibility for his actions, and he's proud of himself. Even
11 though he's incarcerated, he believes his life has turned around
12 for the better. He says he's ready to help the Government close
13 other prostitution rings, and is looking forward to his release
14 so he can support his family and raise the public's awareness
15 about issues of prostitution and pimping.

16 Turning to the Defendant's character, he's 45. He has
17 a substantial prior record. Robbery in 1986; felon in
18 possession in 1989; assault and battery in 1991; felon in
19 possession in 1993; disorderly conduct while armed and battery
20 in 1994; failure to support a child in 1996; felon in possession
21 in 1999; and then a drug possession in 2008. There's a 10 year
22 gap between the last two convictions, but it was during this
23 time that the Defendant committed the instant offense. So
24 there's really not a break in the criminal conduct.

25 The PSR includes statements from family members, which

1 I've considered. His mother says he's not the monster he's
2 been made out to be. His sister indicates that he cares for his
3 children.

4 I'll also consider the statements of the people today,
5 both Defendant's people, family members, and supporters of the
6 Defendant, and also Miss Myers, who spoke really on the
7 Government's side.

8 The Defendant told the presentence writer that he has
9 26 children, but he's only provided information on 20 of them.
10 His support arrears were about \$30,000, but he settled in 2005
11 for 12,000. And the Defendant admits some past substance abuse,
12 but he doesn't appear to have a significant current problem.
13 He's a high school grad, and he reports self employment in
14 various business ventures.

15 The guidelines call for a term of 360 months to life.
16 The Government recommends 240 months. The Defendant recommends
17 120 months. I agree with both the Government and the Defendant
18 that a term below the range is sufficient to satisfy the
19 purposes of sentencing. The Government didn't address it a lot
20 in their oral statement, but in the memorandum submitted the
21 Defendant apparently has made significant attempts to cooperate.
22 And that his efforts to cooperate with the Government and
23 provide information certainly does warrant consideration, with
24 or without a formal 5K motion. See United States vs. Knox, 573
25 F.3d 441 at 453, Seventh Circuit, 2009. And the cooperation was

1 extensive in provision of information. And it's discussed in
2 detail in the submissions, and I will consider it in imposing
3 sentence. I don't know if there's any possible Rule 35 motion
4 in the offing. That's pretty much in the control of the
5 Government.

6 I do find that the suggested sentence by the Defendant
7 is not really adequate. I think that there's -- the Defendant
8 depreciates the seriousness of his crime by noting that he
9 didn't force some of the prostitutes into the field. Some were
10 prostitutes before he found them. Others maybe even sought him
11 out. But what makes this case so aggravated, or one aspect of
12 it that makes it aggravated, is that -- the lengthy period of
13 time over which the Defendant engaged in this activity, and then
14 the violent and degrading manner in which he treated the women
15 who worked for him. Defendant notes that some continued to
16 prostitute themselves even after he went to jail. But I don't
17 really think that that mitigates things. You know, it's true
18 that the Defendant didn't create the prostitution racket, and
19 maybe there were -- some of the women that worked for him were
20 prostitutes before, but he engaged in it in a brutal fashion for
21 nearly 10 years.

22 The Defendant notes that a long sentence means that
23 his children will grow up without a father. I understand and I
24 appreciate the statement of his daughter which, in many ways,
25 was a very impressive statement. There's no doubt that she's

1 very intelligent. And I appreciate the other family member
2 statements. But I don't think there's any evidence in the
3 record, or not very much, that the Defendant was a very involved
4 father to the children. It's not clear whether it was 20, or --
5 20, or 21, or 26 children that he has. There's really very
6 little indication that he was an involved father with these
7 children. And even under his recommendation he's going to be
8 away from them for a long time.

9 The Defendant also contends that his criminal history
10 is overstated, but I don't agree with that assertion. As I
11 noted in discussing his record, he's really been involved
12 continually in criminality for more than 25 years. Now, most of
13 his priors are older, and they occurred when he was a younger
14 man. But that argument would have a lot more force if he had
15 stayed out of trouble since then. But there's no sustained
16 period of time since 1985 when he wasn't either involved in the
17 system, or involved in the conduct that I'm sentencing him for
18 now. Which covers, as I say, from 2001 to 2009.

19 Departures under 4A1.3(b) or variances based on this
20 overstatement argument make -- they seem more appropriate when
21 the priors are old and there's no other evidence of criminal
22 behavior in the intervening period, as discussed in application
23 note 3. So I don't really think there's a basis for departing
24 or lowering the sentence based on this argument.

25 The Defendant asked me to disregard the 1990 municipal

1 battery case, but even if I do that, he's still in Category 6.
2 He also asked me to reject the 1993 felon in possession case,
3 arguing that that case is old, and that he no longer associates
4 with guns. But the Defendant has three felon in possession
5 cases on his record, and I really can't ignore that. The
6 instant offense conduct may not have involved guns, but it
7 certainly involved a lot of violence. I see no indication that
8 the scoring of the 1993 case grossly overstates his record, as
9 the Defendant argues.

10 The Defendant also asked me not to consider the 1993
11 disorderly conduct and battery case, arguing that this case
12 shows the mistakes of a young man growing up in a violent
13 neighborhood under difficult conditions. But he continued this
14 violent behavior in the case into his forties. Once again, I
15 don't accept the overstatement argument. Category 6 is really
16 an appropriate criminal history category based on all the
17 evidence. Nevertheless, I note that even in Category 5 -- even
18 if he was in Category 5, and using his recommended offense
19 level, his guideline range would be 262 to 327 months. And even
20 if he was in Category 4, it would be 235 months to 293 months.
21 And only if it was that low would it go below the guideline
22 recommendation that the -- not the guideline recommendation, I
23 guess the sentencing recommendation that the Government is
24 making. And it wouldn't even be anywhere near the
25 recommendation that the Defendant makes. Even if I -- even if

1 I -- as I say, lowered these categories to 5 or 4.

2 The seriousness of the instant offense, and the prior
3 record really demand a prison term of substantially more than
4 the Defendant requests. A more substantial sentence is also
5 needed for purposes of general deterrence, to make clear that
6 this sort of conduct won't be tolerated.

7 On the cooperation issue, the Defendant argues that
8 the cooperation is not what entitled him to the 20 year
9 recommendation, which was offered before he debriefed. The
10 Government disagrees and indicates that the debriefing was
11 required for the 20 year recommendation. But I don't really
12 have to resolve that. I ultimately decide what the cooperation
13 is worth. And I'm not bound by the parties' recommendations.

14 The Defendant argues that a 20 year sentence would
15 create unwarranted disparity. He first compares himself to
16 co-Defendant Shamika Evans, but she hasn't been sentenced yet,
17 and I don't know what will happen in her case. So that's not
18 really a helpful comparison. And then he gives a list of other
19 Defendants sentenced for other conduct across the country. I
20 guess the conduct is somewhat similar. And most of the other
21 Defendants got less than the Government's recommendation. But
22 there's really not enough information that is provided to me
23 about the specifics of those cases, and what those -- what
24 exactly the Defendants did, and what their criminal records
25 were. So it's really not -- it doesn't really help me to make a

1 very good comparison. I mean, I can certainly -- can and will
2 consider these types of arguments.

3 The Seventh Circuit has noted that the best way to
4 curtail, quote, unwarranted, quote, disparity is to follow the
5 guidelines. See U.S. vs. Bartlett, 567 F.3d 901 at 908, Seventh
6 Circuit, 2009. The Defendant lists some Wisconsin cases
7 involving sentences of 30 years, 25 years, 5 years, and
8 168 months. And those cases also don't support the Defendant's
9 requested sentence.

10 Defendant also argues that 10 years is enough for
11 specific deterrence. But I don't really agree with that,
12 either. The Defendant's been to prison before. Not for long.
13 Long periods. I agree. But the periods he was in, he got out.
14 He quickly returned to crime. And he apparently got a break in
15 his last Federal prosecution.

16 Also I really have to consider the need for just
17 punishment. And just punishment -- that need here demands a
18 severe sentence. And general deterrence does also. And
19 protection of the public does, also. Although it's true that
20 Defendants sometimes age out of criminality, and it's possible
21 that the Defendant will, I don't -- there's really no evidence
22 one way or another on that. It's possible that he could return
23 to this kind of conduct. It's possible that he wouldn't. And
24 it's hard to really base much on that, because it's all
25 speculative.

1 I agree generally that Courts should employ
2 incremental punishments in order to deter. And someone who's
3 not been previously subject to a long imprisonment may require
4 less time for specific deterrence to be deterred, than someone
5 who has already done really a long time but continues to
6 re-offend. See U.S. vs. Qualls, 373 F.Supp.2d at 877.
7 Defendant's past sentences have been on the lenient side, but
8 he's been to prison several times and it didn't help.

9 Finally, a Court should take seriously the notion that
10 its sentence will require the Defendant to spend the rest of his
11 life in prison. And that's another argument that the Defendant
12 makes. And I think that's a serious argument. See U.S. vs.
13 Vallar, 635 F.3d, 271 at 279-80, Seventh Circuit, 2011.

14 Defendant's now 45, and he indicates that his
15 predicted life expectancy is 61. And he relies on a report
16 which indicates that a black male born in 1966 has an estimated
17 life expectancy of 60.9 years. But it's certainly possible that
18 the Defendant could live longer than that. I mean, life
19 expectancy changes as a person grows older. Because the formula
20 leaves out the people who died at ages younger than his current
21 age. For example, if we're trying to determine life expectancy
22 at a time when the person is 50, we don't average in the numbers
23 for people who died before reaching age 50. The chart Defendant
24 uses appears to measure life expectancy at birth. But there's
25 no -- I'm not going to get into an actuarial dispute here. I

1 find that the purposes of sentencing require a term longer than
2 that proposed by the defense.

3 Under all the circumstances I find a sentence of
4 240 months sufficient but not greater than necessary to satisfy
5 the purposes of sentencing. This Defendant -- this sentence is
6 based on 3553(a), and it would be the same even if I had agreed
7 with the Defendant on all the guideline objections. See U.S.
8 vs. Sanner, 565 F.3d 400 at 406, Seventh Circuit, 2009. Even
9 under his version, the guideline range would be 292 months to
10 365 months, which is well above the sentence I've imposed.

11 Therefore, Defendant is committed to the Bureau of
12 Prisons for 60 months on Count 1, and 240 months on Count 3, to
13 run concurrent. I recommend that he be placed at Oxford. I
14 make this recommendation based on the reasons set forth in the
15 Defendant's PSR addendum. Based on his financial situation, I'm
16 not going to impose any fine. Three years of supervised release
17 on each Count to assure monitoring. While on supervised release
18 Defendant cannot commit any crimes. He has to comply with the
19 standard conditions of the Court. Within 72 hours of release he
20 has to report to probation. No firearms, or dangerous weapons,
21 or possession of a controlled substance. He has to cooperate
22 with DNA. Has to participate in a program of testing and
23 residential or outpatient treatment for drug or alcohol abuse as
24 directed by probation. Probation can require up to six random
25 tests per month. Special assessment is \$200 due immediately in

1 Room 362.

2 Defendant has a right to appeal if he thinks there's
3 something unlawful about the conviction or the sentence.
4 Counsel has a duty to advise him of his rights in that regard.
5 Any Notice of Appeal has to be filed within 14 days of the entry
6 of judgment. If Defendant wants to appeal, and can't afford to,
7 he can ask for leave to appeal as a poor person.

8 I'll dismiss all the other counts. I think that's
9 everything. Thank you.

10 MR. WASHINGTON: Judge, one other matter, please.
11 There have been some submissions by the defense in this case,
12 including some documents that bear the images of children. Some
13 documents that bear the images of children, which I think it is
14 generally the practice of this District not to include the
15 images of children without them being redacted. And I would
16 respectfully ask that we -- the parties take it upon themselves
17 to submit to the Court modified submissions that do not include
18 the images of children, Judge.

19 THE COURT: Any objection, Mr. Cotton?

20 MR. COTTON: I don't have any problem with that.

21 THE COURT: Okay. So ordered.

22 * * *

23

24

25

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
3

4 I, HEIDI J. TRAPP, Official Court Reporter for the
5 United States District Court, Eastern District of Wisconsin, do
6 hereby certify that I reported the foregoing Transcript of
7 Proceedings; that the same is true and correct as reflected by
8 my original machine shorthand notes taken at said time and place
9 before the Hon. Lynn Adelman.
10

11
12

Official Court Reporter
United States District Court
13

14 Dated at Milwaukee, Wisconsin,
15 this 11th day of June, 2012.
16
17
18
19
20
21
22
23
24
25